United Nations CED/C/PRY/Q/1

International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

List of issues in relation to the report submitted by Paraguay under article 29, paragraph 1, of the Convention*

I. General information

1. Please indicate whether the State party envisages making the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications.

2. Please provide examples of case law, if any, in which the provisions of the Convention or article 236 of the Criminal Code have been invoked or applied.

3. Please provide information on the current status of the process to appoint an Ombudsman. Bearing in mind the statements made in paragraph 180 of the State party's core document (HRI/CORE/PRY/2010), please also provide updated information on measures taken to allocate the Ombudsman's Office the resources needed for the proper discharge of its functions. In addition, please provide further information on the activities carried out by the Ombudsman's Office on questions related to enforced disappearances.

II. Definition and criminalization of enforced disappearance (arts. 1–7)

4. Please indicate whether, during a state of emergency, the national legal framework provides for the possibility of derogating from any of the rights or procedural guarantees that are embodied in national laws or international human rights instruments to which Paraguay is a party and that might be relevant for preventing and combating enforced disappearances. If so, please enumerate the rights or procedural guarantees from which it is possible to derogate and in which circumstances, under which legal provisions and for how long it is permissible to do so. Please also provide information on the content of the directive on the scope of the state of emergency and the security forces operational protocol, which were mentioned in paragraph 10 of the report, in particular with regard to questions relating to enforced disappearances, as well as their current status (art. 1).

* Adopted by the Committee at its sixth session (17–28 March 2014).

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5. In relation to article 236, paragraph 1, of the Criminal Code, please explain whether being placed outside the protection of the law is a consequence of enforced disappearance or whether, conversely, it should be understood as a constitutive element of the crime. In addition, please comment on the scope of paragraph 2 of article 236 (arts. 2, 4 and 6).

6. In relation to paragraph 13 of the report, please specify how the acts defined in article 2 of the Convention are investigated and prosecuted when they are carried out by persons or groups of persons who are acting without the authorization, support or acquiescence of the State (art. 3).

7. Please provide information on the content of the preliminary bill on the implementation of the Rome Statute, which is currently under consideration by Congress (paragraph 40 of the report), in particular with regard to questions concerning enforced disappearances, as well as on its current status and when it is expected to be adopted and to enter into force (art. 5).

8. In relation to article 6, paragraph 1 (a), of the Convention, please provide information on applicable legislation pertaining to the following acts: ordering, inducing the commission of or attempting to commit, acting as an accomplice to or participating in an enforced disappearance, or any other act that is similar in nature to those listed. Please also provide information on applicable legislation pertaining to the responsibility of hierarchical superiors as set out in article 6, paragraph 1 (b), of the Convention (art. 6).

9. In relation to paragraph 20 of the report, please indicate whether there is any legislative initiative that envisages making provision in the criminal law for the mitigating and aggravating circumstances referred to in article 7, paragraph 2, of the Convention (art. 7).

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

10. In relation to article 5 of the Paraguayan Constitution, which stipulates that "genocide and torture, as well as enforced disappearances, abduction and homicide for political reasons, shall not be subject to statutory limitations", please specify whether that principle applies to all acts of enforced disappearance (article 236 of the Criminal Code). If it applies only to acts of enforced disappearance that are committed for political reasons, please specify the statutory limitations that would apply to other cases of enforced disappearance (art. 8).

11. Please indicate whether national law grants Paraguayan courts jurisdiction over cases of enforced disappearance that are committed abroad in which the victim is a Paraguayan national. Please provide examples of any such cases (art. 9).

12. Please supply further information on the scope, content and functioning of the Assistance and Protection Programme for Witnesses and Victims in Criminal Proceedings to which reference is made in paragraph 34 of the report. In particular, please indicate whether access to the programme is available to other persons participating in the investigation of an enforced disappearance, such as the complainant, the relatives of the disappeared person and their defence counsel. Please also indicate whether the Directorate for the Assistance and Protection Programme for Witnesses and Victims in Criminal Proceedings has the financial, technical and human resources needed to work effectively (art. 12).

13. Please provide information on the measures provided for by law to ensure that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation or to threaten persons participating in

the investigation. In particular, please indicate whether the law provides for suspension from duties during an investigation when the alleged offender is a State official. Please also specify whether there are any mechanisms in place to exclude a security force from the investigation into an enforced disappearance when one or more of its officers are accused of committing the offence (art. 12).

14. Please provide detailed and updated information on the progress and results of investigations into alleged enforced disappearances that were committed during the dictatorship in Paraguay between 1954 and 1989, including the number of investigations under way, the number of persons who have been accused or convicted, and the criminal provisions that have been applied. Please also provide information on measures taken to guarantee the right of the victims to be informed of the progress and results of the investigation and to participate in the proceedings. In addition, please indicate whether complaints of enforced disappearances that were committed after 1989 have been received and are being examined and, if so, please provide information on them, and on human trafficking cases that may fall under the terms of the Convention (arts. 12 and 24).

15. Please state whether, under Paraguayan law, limitations or conditions may be placed on requests for mutual legal assistance or cooperation, as provided for in articles 14 and 15 of the Convention, including in the case of requests from States that are not party to the Convention. In addition, please elaborate on the information supplied in paragraphs 51 and 112 of the report (arts. 14 and 15).

IV. Measures to prevent enforced disappearance (arts. 16–23)

16. Please provide information on the mechanisms and criteria applied as part of expulsion, return, surrender or extradition procedures in order to assess the risk of a person being subjected to enforced disappearance. Please also provide information on the authorities who determine the expulsion, removal or return of persons and the criteria on which such determinations are based. Please indicate whether it is possible to appeal a decision authorizing an expulsion, return, surrender or extradition and, if so, before which authority and using which procedure this may be done. Please also indicate whether the appeal has suspensive effect. Lastly, please provide information on mechanisms to guarantee that each case is assessed on an individual basis prior to the extradition, surrender, return or expulsion of a person (art. 16).

17. Please indicate whether any exceptions may be applied to the right enjoyed by persons deprived of their liberty to have their family or any other person they designate informed immediately of their detention. Please also provide information on measures that have been taken with a view to ensuring that this right is guaranteed in practice (art. 17).

18. Please specify in detail the information that must be recorded in registers of persons deprived of liberty that are kept in prison centres and police stations (paragraph 69 of the report), and also in registers kept in any other facilities where persons deprived of liberty are held, such as military detention centres. Please also specify whether such registers comply fully with article 17, paragraph 3, of the Convention, and provide information on measures taken to ensure that these are duly completed and kept up to date. In addition, please comment on allegations to the effect that some cases of deprivation of liberty have not been properly registered, for example in police stations. If this is the case, please provide information on the procedures followed, the punishments imposed and the measures taken to ensure that such omissions are not repeated, including whether training has been imparted to the personnel in question (art. 17).

19. While taking note of the information provided in paragraphs 82 to 84 of the report concerning training programmes in human rights for the military and commissioned and

non-commissioned officers of the National Police, the Committee would like to know whether the State party provides, or plans to provide, specific training in the Convention, as set out in article 23 thereof, to civil or military law enforcement personnel, medical personnel, public servants and to any other persons who intervene in the custody or treatment of persons deprived of their liberty, such as judges, prosecutors and migration authorities (art. 23).

V. Measures for reparation and protection of children against enforced disappearance (arts. 24 and 25)

20. Bearing in mind the information provided in paragraph 86 of the report, please indicate whether there are other legislative provisions that contain a definition of victim. If so, please provide a description of such provisions (art. 24).

21. In paragraph 86 of the report, reference is made to Act No. 838/96 on payment of compensation to victims of human rights violations during the dictatorship of 1954 to 1989, which provides for compensation "in cases of enforced disappearance for political or ideological reasons". It states that one article of the Act provides that the right to compensation may be claimed by the surviving spouse or blood relatives up to the first degree. In this connection, please indicate whether, in addition to those persons, other natural persons who have suffered harm as a direct result of an enforced disappearance are entitled to claim the compensation provided for under Paraguayan law for victims of the dictatorship. Please also provide updated information on the compensation that has been awarded in cases of enforced disappearance of persons (paragraph 106 of the report) and on measures taken to expedite the procedures for awarding such compensation. Please indicate whether measures taken to provide redress to persons who were victims of enforced disappearance during the dictatorship have included rehabilitation services, such as medical and psychological assistance, and whether women who were victims of enforced disappearance during this period have received assistance in keeping with measures to provide comprehensive support in cases of violence against women, which are described in the report. Please provide additional information on the Victim's Care Centre of the Public Prosecution Service to which reference is made in paragraph 171 of the State party's core document (HRI/CORE/PRY/2010) (art. 24).

22. Please provide updated information on measures taken to locate persons who disappeared during the period of the dictatorship (paragraphs 91–97 of the report) and the results of those measures. Please also specify whether the mechanisms responsible for investigating, searching for and identifying persons who disappeared during the dictatorship have the financial, technical and human resources they need to carry out their work promptly and effectively (art. 24).

23. Please provide information on current legislation pertaining to the legal situation of disappeared persons whose fate has not been clarified and their relatives, in fields such as social welfare, financial matters, family law and property rights (art. 24).

24. Please provide information on the legislation applicable to the acts described in article 25, paragraph 1, of the Convention. Please also indicate whether any cases have been registered of children who were victims of enforced disappearance during the period of the dictatorship. If so, please provide statistics on such cases and supply information on measures taken to locate those children and on the results obtained. Please also specify what mechanisms are in place for mutual assistance between States in searching for, identifying and locating children allegedly subjected to enforced disappearance (art. 25).

25. Please provide information on the procedures that have been established to review, and if necessary, annul any adoption, placement or guardianship that originated in an

enforced disappearance. If no such procedures have been established yet, please indicate whether an initiative has been taken to bring the national legislation into conformity with article 25, paragraph 4, of the Convention (art. 25).